
**Before the
Federal Communications Commission
Washington, DC 20554**

Joint Petition of CTIA and RCA Regarding the)
December 31, 2005 Deadline for Licensees)
Employing a Handset-Based E911 Phase II) WT Docket No. 05-288
Location Technology to Achieve Ninety-Five)
Percent Penetration of Location-Capable)
Handsets Among their Subscribers)

To: The Commission

COMMENTS OF NEXTEL PARTNERS, INC.

Nextel Partners, Inc. (Nextel Partners) supports the grant of the CTIA/RCA Joint Petition for Suspension or Waiver of the Location-Capable Handset Penetration Deadline (CTIA/RCA Petition).¹ The CTIA/RCA Petition provides the Federal Communications Commission (Commission) with an ample basis to justify suspension of the December 31, 2005 deadline for achieving ninety-five percent penetration of location-capable handsets within a wireless carrier's customer base. If, rather than suspending the deadline, the Commission proceeds to consider waivers on an individual carrier basis, then the CTIA/RCA Petition provides a range of sufficiently particularized and appropriate criteria that the Commission should use in evaluating individual waiver requests.²

¹ Nextel Partners files these comments pursuant to the Commission's Public Notice on the CTIA/RCA Petition. *See Wireless Telecommunication Bureau Requests Comment on Joint Petition of CTIA and RCA Regarding the December 31, 2005 Deadline for Licensees Employing A Handset-Based E911 Phase II Location Technology To Achieve Ninety-Five Percent Penetration of Location-Capable Handsets Among Their Subscribers*, Public Notice, DA 05-2678, WT Docket No. 05-288 (rel. October 7, 2005). Nextel Partners recently filed its own Petition for Limited Waiver of the December 31, 2005 compliance date. *See Petition for Limited Waiver of Nextel Partners, Inc.*, CC Docket No. 94-102 (filed October 17, 2005) (Nextel Partners Waiver Petition).

² *See* CTIA/RCA Petition at 10-15.

I. INTRODUCTION

As the CTIA/RCA Petition presents, time and experience have proved that there are a range of challenges inherent in achieving a ninety-five percent GPS handset penetration within the customer base of every Commercial Mobile Radio Service (CMRS) carrier that selected a handset-based E911 solution. While it appears from the waivers recently filed by national wireless carriers and the eleven Tier III carriers with waiver petitions pending that carriers are making great strides in achieving widespread GPS handset penetration, more time plainly is needed by most, if not all carriers, to reach the ninety-five percent penetration benchmark.

Significantly, the National Association of Regulatory Utility Commissioners (NARUC), a non-profit group representing the interests of state regulators, filed early comments in support of the CTIA/RCA Petition. NARUC recognizes that there are factors beyond the control of wireless carriers that are relevant to a carrier's ability to comply with the December 31, 2005 deadline.³ The Commission should take these factors into account either in its evaluation of individual carrier waiver requests or in granting a suspension of the deadline, as urged by CTIA/RCA.

II. GRANT OF THE CTIA/RCA PETITION IS IN THE PUBLIC INTEREST

The CTIA/RCA Petition succinctly explains the major obstacles that wireless carriers face in meeting the December 31, 2005 penetration deadline - "customers are not leaving their wireless providers at nearly the rates anticipated."⁴ Further, customers "are reluctant to go to the

³ See Comments of NARUC, WT Docket No. 05-288 (filed October 17, 2005) at 3 (NARUC Comments) ("Both safety and convenience factors impede progress towards this deadline.").

⁴ See CTIA/RCA Petition at 5. See also ALLTEL Corporation Petition for Limited Waiver, CC Docket 94-102 (filed September 30, 2005) at 7 (ALLTEL Waiver Petition) ("Because many of Alltel's existing customers appear to be resistant to upgrading their handsets, the simple addition
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trouble to acquire location-capable handsets when they know that the PSAP will not be able to use the data the handset generates.”⁵ This lower than anticipated customer churn rate, while a demonstration of increased investment in customer retention and higher levels of customer satisfaction, has the inevitable result of lowering rates of handset turnover to levels less than the Commission expected when it adopted its final compliance benchmark and timetable for ninety-five percent penetration.

As several carriers observe in their pending waiver requests, lack of Phase II PSAP readiness is a factor in customer willingness to upgrade their handsets as well as an impediment to wireless carriers that could otherwise strongly promote the availability of location-based public safety services as an additional inducement to upgrade handsets.⁶ This also is consistent with Nextel Partners’ experience in encouraging its non-GPS customers to upgrade their handsets.⁷ Only six states and the District of Columbia have accomplished the upgrades

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of new subscribers and the loss of existing customers in itself is an insufficient indicator of ALI-capable handset penetration improvement.”).

⁵ See CTIA/RCA Petition at 4.

⁶ See, e.g., Request for Limited Waiver of Verizon Wireless, CC Docket No. 94-102 (filed October 17, 2005) at 13 (Verizon Wireless Waiver Petition) (“Given the limited degree of Phase II deployment [by PSAPs]. . . an explicit E911-based campaign to promote GPS-capable handset sales would not serve the public interest, but would only confuse and mislead customers. Due to disparate PSAP capabilities, no carrier can represent that E911 will be available to its subscribers throughout its footprint, or even in their home market.”).

⁷ See Nextel Partners Waiver Petition at 17. See also NARUC Comments at 3 (“Even in those areas where the PSAP upgrades have been completed, some consumers will not want to go through the hassle of replacing a functioning handset. The process of learning new features, reformatting speed dials and other settings, and purchasing accessories often outweighs location capability.”). See also Verizon Wireless Waiver Petition at 17 (“Even after two and half years of selling only GPS handsets, it is clear that the services, features and pricing plans that motivate new subscribers to subscribe to Verizon Wireless, either through normal growth patterns or LNP-related churn, may not motivate some existing subscribers to upgrade to new phones.”).

necessary to receive and utilize location data sent by wireless carriers.⁸ A suspension of the ninety-five percent compliance deadline for a reasonable period of time thus would not deprive wireless customers of the benefits of E911 Phase II service. The other common factor in most if not all of the pending petitions for waiver is that there is a core of customers resistant to changing from non-GPS to GPS handsets, thereby complicating any carrier campaign to reach the Commission's penetration benchmark.⁹

CTIA/RCA also provide the Commission with an alternative to generalized relief, through the establishment of a proposed framework, or set of criteria, that could be applied to the facts and circumstances surrounding individual waiver requests.¹⁰ The proposed criteria are an

⁸ See *No Signal – Cellphone Hangup: When You Dial 911, Can Help Find You? — As More People Go Wireless, Patchwork of Call Centers Slows Locator System — Upgrade Money Spent on Boots*, Wall St. J., May 12, 2005, at A1 (“Virtually all of the nation’s 6,000 call centers can locate land-line phones, but only 41 percent of them can locate cellphones”). See also CTIA/RCA Petition at 3-4; NARUC Comments at 3.

⁹ This has certainly been Nextel Partners’ experience. See Nextel Partners Waiver Petition at 18 (“Upgrading handsets to A-GPS capable handsets outside of the normal replacement cycle, even if it is at no cost, simply is not appealing to this substantial segment of Nextel Partners’ customer base.”). See also ALLTEL Waiver Petition at 9 (“Finally, despite Alltel’s marketing efforts and information campaigns touting E911 and the need for an A-GPS handset, Alltel’s resistant customers continue to be more interested in retaining their existing handsets than obtaining E911 service.”) See also Sprint Nextel Corporation Request for Limited Waiver, CC Docket No. 94-102 (filed September 29, 2005) at 19 (“For whatever reasons, many of these customers simply do not want to upgrade their handset.”).

¹⁰ CTIA/RCA propose a three-part framework for streamlining the waiver review process: (1) a carrier would have to make an initial “threshold” showing that it has made a good-faith effort to comply with the Commission’s E911 Phase II interim deployment requirements and other FCC E911 implementation rules; (2) a carrier would have to demonstrate that it has satisfied *at least one* of several established factors that would justify grant of the waiver; and (3) a carrier meeting the first two criteria would be granted additional time to achieve the 95 percent penetration benchmark, with the amount of time allowed depending on the individual carrier’s circumstances. For the second criteria, *any* of the following criteria would show legitimate reasons for grant of the waiver: (1) lower-than-forecast churn, (2) customer resistance to new handsets, (3) substantial compliance, (4) technology change, (5) technology glitch, (6) analog
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attempt to allow particularized showings covering a range of possible circumstances where full and timely compliance is either not possible or necessary. Nextel Partners supports this framework for waiver review as a reasonable alternative to a generalized suspension, so long as the Commission does not select a single criteria for evaluation to the exclusion of the others.

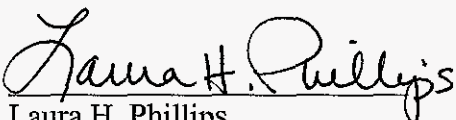
III. CONCLUSION

Given the number of pending petitions seeking a waiver of the Commission's December 31, 2005 compliance deadline and the commonality of the challenges the petitioners identify, it is obvious that the Commission should take into account in its review those circumstances that are beyond a wireless carrier's reasonable control. Taken as a whole, the petitions appear very consistent in their themes and identification of impediments to timely compliance with the 95 percent benchmark, thus making a suspension of the December 31, 2005 compliance date both appropriate and necessary.

Respectfully submitted,

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October 21, 2005

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coverage in very rural markets or (7) coordination with PSAP deployment schedules. *See* CTIA/RCA Petition at 10-15.

CERTIFICATE OF SERVICE

I hereby certify that, on this 21ST day of October, 2005, copies of Comments of Nextel Partners, Inc. in WT Docket No. 05-288 were sent by U.S. mail to the parties listed below.

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